THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22130 of 2006

.12.2006

Between:

Vinayaka Mini Modern Rice Mill, Unduru, represented by its Proprietor, Edala Lakshmi Kantham, W/o.Suryanarayana

... Petitioner

AND

The Assistant Engineer (Rural), A.P. Transco, Brownpeta, Samalkot Town and Mandal, East Godavari District

And another

... Respondents

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.22130 of 2006

ORDER:

The petitioner rice mill, a proprietary concern, availed electricity supply from the respondents in 1999 (Service Meter No.610000654) and is allegedly paying Current Consumption (CC) charges regularly without any default. However, it is alleged that on 15.6.2006, Field Staff of the respondents took way the service meter and the transformer from the petitioner premises. The attempt of the petitioner to know the reasons proved futile. The petitioner, therefore, issued a legal notice dated 05.9.2006 for which a reply dated 14.10.2006 was issued informing that the service was disconnected for non-payment of CC charges and that a notice was duly served on 21.11.2005 on E.Prasad, son of the proprietor of the petitioner rice mill. When the proprietor refused to receive the notice, it was pasted to the door of the petitioner mill in the presence of security guards. The petitioner denies all the allegations, in the affidavit. This writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in removing the service meter and the transformer from the petitioner premises as illegal, arbitrary and contrary to the provisions of the Electricity Act, 2003 (the Act, for brevity) and also a consequential direction to the respondents to restore power supply to the petitioner rice mill.

At the stage of preliminary hearing itself, the second respondent has filed a counter affidavit to which a reply affidavit is filed. Therefore, the matter was heard finally and is being disposed of at the admission stage.

In the counter affidavit, the Assistant Divisional Engineer states as follows. The petitioner was given Service Connection No.654 under LT category III A with contract load of 52.68 hp. The petitioner did not pay CC charges for the months of February and March 2005 in a sum of Rs.2,112/- and Rs.2,026/- respectively. Therefore, after following the procedure under Section 56 of the Act, the power supply was disconnected on 27.3.2005. Even thereafter, the petitioner did not pay the arrears in terms of conditions of supply agreement, which requires the consumer to regularize the payment within three months from the date of disconnection. As per the service agreement, the petitioner is also liable to pay the minimum charges of Rs.35,290/- upto August 2006. Therefore, the second respondent issued notice of contravention dated 29.8.2005, which was served on E.Prasad on 21.11.2005. Thereafter, the proceedings dated 28.7.2006 were issued intimating the termination of agreement and accordingly the same was terminated on 30.8.2006.

Reply affidavit is filed denying the counter averments. An attempt is made in the reply affidavit to point out the so-called inconsistent statements made in paragraph 3 of the counter affidavit. To drive home the point that notice was not served as required under the relevant Rules.

Learned Counsel for the petitioner vehemently contends that the disconnection of power supply and contravention of agreement of supply of electricity without notice violates Section 56 of the Act and Condition 5.9.4.3 of the General Terms & Conditions of Supply (GTCS). Nextly, it is urged that even after disconnection of power supply, the consumer has a right to seek regularization and restoration of power supply and the termination of agreement is *ex facie* illegal. **Per contra**, learned Standing Counsel for A.P. Transco submits that the bill sent to the petitioner for the months of February and March 2005 itself indicates that power supply will be disconnected if the amount is not paid within the stipulated time and thereafter after giving notice under Regulation 8.1 of Andhra Pradesh Electricity Regulatory (Electricity Supply Code) Regulation, 2004, the agreement was terminated. He also submits that the notice was served on E.Prasad on one occasion, and on another occasion when the petitioner refused to receive the same it was pasted on the door of rice mill.

The question whether the procedure was followed fairly in disconnecting power supply to the petitioner's premises and in terminating the agreement of supply, is essentially a question of fact. Be that as it is, section 56 of the Act casts a compelling duty on the distribution licensee to discontinue power supply until the CC charges are paid by the consumer. After the electricity bill is served, Section 56 of the Act requires fifteen days notice for its payment. After expiry of fifteen days, no notice of disconnection is separately required. This Court can as well take judicial notice of the situation that every consumer who avails power supply from any distribution company is required to pay the electricity bill within the stipulated time, which is usually printed on top of the electricity bill. In this case, for the months of February and March 2005, the petitioner did not pay the electricity bills. Therefore, the power supply was disconnected. This cannot be faulted. In fact, during the course of the arguments, learned Counsel for the petitioner also brought to the notice of this Court that the petitioner unit became sick for some time, which would certainly probablises the case of the respondents that the petitioner failed to pay the electricity bills for February and March 2005. Along with the counter affidavit, the second respondent annexed proceedings No.DE/O/KDA/KP/F.Doc/D.No:939/06, dated 28.7.2006 issued by the Divisional Engineer (Operation), Kakinada of Eastern Power

Distribution Company Ltd., terminating LT agreement in respect of service No.619/654 at Unduru in the name of the petitioner with effect from 30.9.2005. At the bottom of the said notice as well as reverse thereof, the signature of Srinivasa Rao, Security Guard, is found. Further, on the reverse, an endorsement is made to the effect that as the consumer refused to sign and take notice, it was pasted on the door of petitioner rice mill. In the opinion of this Court, this is sufficient compliance to the requirement of law and the same cannot be faulted. A reference may be made to Condition No.5.9.4.3 of GTCS, which reads as under.

> **5.9.4.3**: **Termination of LT Agreement and HT Agreement on account of disconnection:** Where any consumer, whose supply is disconnected for non-payment of any amount due to the Company on account, fails to pay such dues and regularize his account within three Months from the date of disconnection, the Company shall after completion of 3 months period, issue one Month notice for termination of the LT or HT Agreement, as the case may be. If the consumer still fails to regularize the account, the Company shall terminate the Agreement with effect from the date of expiry of the said one-Month notice. Such termination shall be without prejudice to the rights and obligations incurred or accrued prior to such termination.

Therefore, if the petitioner wants to avail power supply, it has to apply for service connection afresh and has to pay security deposit, developmental cost and all other necessary charges. As and when the petitioner applies for a new connection, the same shall be considered by the respondents keeping in view the provisions of Section 43 of the Act and Condition No.5.9.4.3 of GTCS. In this writ petition, no relief can be granted.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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December , 2006 (**V.V.S.RAO, J**)

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